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Ordnance Survey maps as a commercial product

The Ordnance Survey (OS) originated in the late 1700s to provide maps for military purposes, primarily preparing for invasion from France. They were later published for sale to the public and quickly adopted as navigational aids by the public seeking access to the countryside, to the extent that Ordnance Survey recognised the commercial viability of the project, and is today a business.

| ... these maps the Board of Ordnance have very liberally determined to publish for the benefit of the public.¹

The fact that Ordnance Survey maps sold in sufficient numbers to the public to be a commercial success is significant. The public wanted, according to a director general of the Survey, William Mudge,²

| to possess some general Map established on the same principle with the *Carte de France*.

The *Carte de France* provided topography and, importantly, roads and tracks for travel.

It was recognised within Ordnance Survey that the public had a vested interest in public rights of way, as stated by another director general, Brigadier Winterbotham:³

¹ Map of a Nation: A Biography of the Ordnance Survey, 1804, Rachel Hewitt, page 159

² Director General of Ordnance Survey 1798-1820

³ A Key to Maps, Harold Winterbotham, 1936

We are almost, without exception, interested in rights of way, either as landowners or as seekers after fresh air and exercise.

Bartholomew's maps

The opinion of the Ordnance Survey directors general was also true of the mapmaker Bartholomew, for whose sales to the public of its half-inch map at its peak exceeded those of Ordnance Survey's half-inch. Ordnance Survey struggled for years to take market share from Bartholomew. This is evident in the report of the 1914 Olivier Committee⁴ which proposed ways to increase sales of Ordnance Survey maps through booksellers in every town and at railways stations, with focus on tourist areas, and to undercut Bartholomew.

The Olivier Committee stressed that:

the Ordnance Survey maps are national maps, paid for by the public, and it is only right that they should be available to the public at the lowest possible prices⁵

Bartholomew's maps were marketed "for Tourists & Cyclists" with the aim of guiding users along roads most appropriate to their mode of travel, it was not to encourage trespass. The company worked closely with the Cyclists' Touring Club⁶ to maximise sales to cyclists, who were more likely to choose minor roads to avoid motor traffic. Its reputation as a traveller's map would have failed had the depiction of roads not been so accurate and clear to the public in showing only highways of use to the cyclist and rider, not private roads which would have been useless to them. The use for the travelling public is illustrated by the representative of Cornish Bros., map-sellers of Birmingham, giving evidence to the Committee, who said that:

[the Ordnance Survey map] is not anything like so popular with the motorist, cyclist and the ordinary tourist as the Bartholomew. Frankly, I certainly think Bartholomew has it.⁷

There are negligible differences between the alignment and inclusion of roads shown on maps of Bartholomew and the Ordnance Survey of the period, the logical assumption being that both organisations were creating maps of use to the travelling public since that was always the primary market of the former and had become the purpose of the latter as the 'state map maker'.

The Committee considered methods of folding the map, including that preferred by the pedestrian as opposed to the motorist, so they were making maps for travellers, not people undertaking a topographical desk exercise. Charles Close⁸ was critical of the road classification as unfit for 'modern requirements' and this was resolved by adopting a new classification in the edition that was under revision through the first world war. Again, this can only be interpreted as providing maps for use by the travelling public. While there are needs and use other than for travel, such as for town planning

⁴ Report of the Departmental Committee on the Sale of Small Scale Maps 1914 PRO Ordnance Survey 1/6

⁵ A history of the Ordnance Survey W A Seymour 1980 page 226

⁶ <https://www.nls.uk/exhibitions/bartholomew/half-inch-series/>

⁷ Olivier committee report para 385

⁸ Director general of Ordnance Survey 1911-22

and infrastructure, the volume of sales to the general public seems most likely to have been as a navigational aid, and such purpose is commonly referred to in books and guides to the countryside of the 1900s.

Horse transport

To place the designation of B.R. for bridle roads in context in the period of surveying and use of the maps from 1880s to 1947, it is important to remember that:

- the horse, both ridden and driven, was the primary mode of transport prior to the first world war, so
- bridle roads were as important to the public as roads are to today's motor traveller, and
- most roads were bridle roads before the right of use with vehicles was acquired through common law and they became wider and metalled to sustain the increased use.

The segue to motor transport was gradual, over decades, and it is apparent from media of the 1950s that the horse remained in use as transport, particularly for local rural journeys at that time.

The disclaimer

Since 1889, Ordnance Survey maps have included a disclaimer stating,

The representation on this map of a Road, Track or Footpath is no evidence of the existence of a right of way.

The disclaimer does not differentiate whether it means public or private rights, possibly deliberately to cover both.

The disclaimer and court cases inferring that the Ordnance Survey did not involve itself in matters of rights of way are frequently relied upon in opposition to the historical existence of public rights, but following its initial purpose to map for the army, the Ordnance Survey was reliant on the maps being useful to the public, so they did show routes that were used by the public, as demonstrated by the 'Instructions to Field Examiners' which detailed the marking of roads and footpaths, including bridle roads, differentiating 'occupation roads' where they were not public. As today, to anyone but a lawyer opposing the existence of a public right of way, the term bridle road means a public way with horses, as defined in common law and statute for centuries.

(7.) *Roads and Foot-paths.*

85. The Examiner should state on the tracing the classification of roads, &c., under the following headings, viz. :— Classing of roads.

First Class Roads, viz.: Main roads, generally leading from town to town, metalled and kept in good repair, and with a minimum width of metalled roadway, exclusive of edges and footway, of 14 feet.

Second Class Roads, viz.: Metalled roads in good repair, fit for fast traffic at all seasons, i.e., it should be possible to drive carriages and light carts over them at a trot. This class will, as a rule, include roads between villages, or between villages and towns, or between one first class road and another, and approaches to railway stations.

Carriage Drives, Second Class, viz.: Carriage drives, up to the standard of second class roads.

Public Roads, Metalled, viz.: Those other than first and second class.

Carriage Drives, Metalled, viz.: Those not up to second class.

Occupation Roads, Metalled.

Public Roads, Mud.

Occupation Roads, Mud.

Cart Tracks.

Bridle Roads.

Footpaths.

Roads should be classified according to their general character, and not with reference to their best or worst portions ;

Figure 1 Instructions to Field Examiners 1905 p85

Repeatedly, documentation from the period makes clear that the existence of public rights was considered. Examiners⁹ were instructed to show routes that were “of use or interest to the public”, and to only show a track clearly visible on the ground if “it is in obvious use by the public”.

⁹ Surveyors were ‘Field Examiners’ in Ordnance Survey terminology

Mere convenience footpaths for the use of a household, cottage, or farm ; or for the temporary use of workmen, should not be shown ; but paths leading to any well-defined object of use or interest, as to a public well, should be shown.

N.B.—A clearly marked track on the ground is not in itself sufficient to justify showing a path, unless it is in obvious use by the public.

Figure 2 Instructions to OS Field Examiners 1905 p.96

References within the Survey's documentation suggest that where public rights were obvious and accepted, they were noted, however, there is truth to the statement that the "Survey does not concern itself with rights of way", whether private easements or public rights, because the surveyors were not qualified to investigate or make a legal judgement where rights were disputed.

Local information on roads and ways was sought, just as for names of places and roads.

The Bridle Roads shown on the 6 inch are based on a classification, carried out some considerable time ago, when they were used as such. The exact definition of a Bridle Road is not known, but it seems likely that they were classified from local information. A Bridle Road *had to run from one public road to another public road.*¹⁰ [Our emphasis]

Both the Boundary Remark Books and the Object Names Books show, in many examples, that the Ordnance Survey surveyors consulted the Surveyor of Highways or Overseers and other local people¹¹ who could be expected to have knowledge of rights of way. From 1836 it was a statutory obligation to keep highway records, of which the Surveyor of Highways must have had intimate knowledge. Entries refer to a road being 'owned' by the district council (the highway authority) for example.

It is most likely that a pragmatic approach was adopted by Examiners, in that if a way appeared public, supported by local knowledge, and no landholder was apparent, or the landholder did not object, it was shown; if the landholder was aggrieved, they dropped it.

However, today the disclaimer is used to deny any public rights being shown at all, despite the clear evidence in the Instructions to Field Examiners¹² that routes were only marked if in use by and of interest to the public.

The public took great interest from the start of the first surveys, which drew onlookers to the process.¹³ There was no documented outcry from the public or the landowners that there were inaccuracies as to what was shown at the time of publication. There were a few letters from aggrieved landowners towards the end of the 1800s. This could be because the growth in industry

¹⁰ The National Archives reference OS 1-1302 from a note dated 29 April 1947

¹¹ The list appears in multiple places including the 1905 Instructions to Field Examiners, page 47

¹² 1905, para 96 "N.B. —A clearly marked track on the ground is not in itself sufficient to justify showing a path, unless it is in obvious use by the public."

¹³ Map of a Nation, Hewitt, "became a parlour game to go and watch, outside influence on the doorstep"

resulted in societal changes, one of them being a wave of new rich buying land. One of the first actions of new landowners is to secure their boundaries and deny customary public access, as happens today.

From 'Use of OS Maps before the Depiction of Rights of Way', published by the British Horse Society:

Catriona Cook:

I spent the first three decades of my life living and riding in seven different counties and aged 16 riding solo from Exmoor to Oxford, using my father's old War Office OS maps which did not depict rights of way. I was not only taught map reading skills by my father but also received the same instructions in geography lessons at two different schools in two consecutive years, in two different counties. These instructions included the right to use thoroughfares and to observe landscape features. I was also taught to interrogate the oldest inhabitant of each new area I was exploring on horse back. These old gentlemen were born in the late 1870s. I was fascinated by them because they had been alive in the days of horse transport. When I was young horses were still used in towns delivering coal and milk etc and there were many cart horses on some farms. These old men were adamant that historically there was a far greater network of public roads and paths than we have today.

The Disclaimer: I was told by my father (who had a photographic memory and was brought up by his grandfather born in 1842, whose family had held land since the 1100s) that this was purely to remove the likelihood of the Ordnance Survey being brought into civil litigation. This is backed up by *The Countryside Companion* in 1948 at p.320 where it states, "*In practice the qualifying statement of the Ordnance Survey may be regarded as a safeguarding clause to absolve them from being involved in any footpath litigation.....A path which is shown, may, however, generally be presumed public.*" And again by Ronald English in *Adventure Cycling* in 1959 at p.122, "*As you will see from the footnote on Ordnance Survey maps, the representation of a track or footpath is no evidence of a right of way. However, any track joining main roads or two villages and not simply leading to a farm is likely to be a right of way.*" And also by Yolande Hodson in *Rights of Way Law Review* in 2003 (OS map expert) "*The disclaimer.... printed in 1889. Its sole purpose was to avoid litigation. It was no more than an early example of the ubiquitous product warnings which are an integral part of daily life today and by which the product manufacturer absolves itself from all responsibility for error, or for any nuisance of the product by the purchaser.*"

So how did the public navigate their way around without the certainty of rights of way? My elderly mentors taught me to read the lie of the land, the landscape. Tremendous manual effort such as embanked roads, walled, ditched, hedged enclosed lanes were all an indication of effort for the benefit of the public. I remember the number of horse water troughs lining the roads of my youth. Fords often with stoned bottoms again were public facilities, along with bridges, ditches and gates. And of course any route had to be a through route: a dead end, unless to a 'place of public resort' was likely private.

The thoroughfare principle

Not only are physical features important but ‘the thoroughfare principle’ has stood the test of time for centuries. This (rebuttable) presumption is that if an ancient route is a thoroughfare between two highways, is more likely than not to be a highway itself. This was upheld by *Fortune* in 2010¹⁴ and again on appeal in 2012.¹⁵ *Fortune* 2010, para 723:

... (a statute) requiring sign posts at cross roads referred to them as ‘cross highways’. Countless law reports, ancient and modern, start from the premise that if the way was a through route, linking two public roads, that way itself was a highway. The thoroughfare principle was fully understood by the courts at the time and nothing has changed since to alter the law ... therefore it still holds good that: every (ancient) thoroughfare is a highway if it connects to another highway or leads to the next town.

The thoroughfare principle and the physical approach were endorsed by the Commons, Open Spaces and Footpaths Preservation Society when giving guidance for surveying for the 1932 Rights of Way Act,¹⁶ which stated:

It is only necessary here to state that most public paths have certain characteristic marks or signs. Thus they are generally useful as "short cuts" or thoroughfares between roads or hamlets, and they are usually provided with stiles, unlocked wicket or other gates, footbridges, stepping stones, or other facilities for passage. Sometimes, too, paths have been repaired or signposted by a local authority, and if so are almost always public.

Devious tracks of no obvious use to the public as thoroughfares; paths which are only of use to persons living or working on the estate through which they pass; and tracks which have only recently come into existence, are not likely to be public, more especially if pedestrians have been systematically or even occasionally turned back, if steps have been taken to close the tracks from time to time, or if notices clearly denying the existence of any public right of way have been maintained without objection for many years.

The Society’s guidance was accepted and endorsed by the government.

Bridle roads and bridleways were public

Some Inspectors¹⁷ today infer that there was a network of bridleways which were exclusive as to use—‘private’ in today’s understanding—yet the legal definition of bridle road or bridleway is a highway on or leading a horse or on foot, defined as a public right to pass in common law for centuries before statute.

¹⁴ *Fortune & Ors v Wiltshire Council & Taylor* [2010] EWHC B33 (Ch)

¹⁵ *Fortune & Ors v Wiltshire Council & Anr* [2012] EWCA Civ 334

¹⁶ Maps and Surveys of Public Rights of Way, Why and How to make them; The Commons, Open Spaces and Footpaths Society, 1932

¹⁷ Acting for the Planning Inspectorate on behalf of the Secretary of State

Bridleway Rights: A horseman's right is that of riding or leading his horse along any "bridleway". That right covers not only a bridleway simply—that is to say a road specially dedicated for the passage of horses and pedestrians only (because a foot passenger has full right to walk along any public bridleway). The widest form of highway is the carriage-way—a way of passage for all wheeled traffic. It covers rights of footway, bridleway and driftway unless the two latter are specifically excluded. A driftway ("drive way" sometimes termed "park way") is the term applied to a way for driving cattle or riding horses, and it covers as a matter of course rights both of footway and bridleway. A right of bridleway does not necessarily cover also a right of driftway—though it does cover a footway. A right of driftway and bridleway does not cover a right of passage for vehicles of any sort. A footway *simpliciter* is a right of passage for pedestrians only.¹⁸

Indications that OS did show public bridle roads

The following extracts and quotes are from a mixed file of papers from the Ordnance Survey in no date order at The National Archives.¹⁹

The words 'Bridle Road' used on OS maps were indications to the public that it was a public route:

Definition of 'Bridle Road' being "Any public highway not confined to pedestrian passage"²⁰

29 April 1947: Memo refers to Bridle Roads being used by the public with horses in the past and defines that they run between two public roads. An easement would not be so bound. Interestingly, they state that B.R.s date back to the days of horse transport and no new ones were added. This is the first mention of bridle roads being obsolete in terms of use, but of course, not of rights, as they did not investigate the legality of rights.²¹

The Bridle Roads shown on the 6 inch are based on a classification, carried out some considerable time ago, when they were used as such. The exact definition of a Bridle Road is not known, but it seems likely that they were classified from local information. A Bridle Road had to run from one public road to another public road.

For some time, new paths added by Large Scale Revisers, in the field have always been classified as footpaths and never as bridle roads. Only paths which were originally classified as Bridle Roads, and still exist, continue to be classified as Bridle Roads. Small Scale Revisers do not differentiate between Bridle Roads and Footpaths.

It would therefore be entirely against present practice to classify any additional paths as Bridle Roads and it seems hardly worth retaining the distinction between Bridle Road and Footpath nowadays.

¹⁸ The Horseman on the King's Highway, William Marshall Freeman, Barrister at law, published by The National Horse Association of Great Britain (date unknown after 1932)

¹⁹ OS 1-1302

²⁰ Note dated 1947 in file TNA reference OS 1-1302

²¹ Photo 377 & 378

Signed G.A./GPT(?)(OSD)

3 May 1947: there is general discussion about Bridle Roads and Foot Paths.²²

DFS

Can you please help?

What are the present instructions about Bridle Roads? What yardstick do the men in the Field have?

The 1937 Instructions to 1/2000 Scale Plans Examiner etc state that "A Bridle Road is generally a footpath but initials B.R. take precedence over the initials F.P." This does not help much.

TDM

In response:

DDG Three Types of Country Way

There are three kinds of country ways

- (i) Drove Roads
- (ii) Bridle Roads
- (iii) Footpaths

The OS have never distinguished between i) & ii) but have called both Bridle Roads ("B.R.s")

Have always been distinguished from i) & ii) by their widths and by the type of barriers which landowners are allowed to set up across it, to prevent cattle straying. Obviously Drove and Bridle Roads may not have stiles but must have unlocked gates. Footpaths and Bridle Paths do not change; rarely they disappear through neglect. Revision custom has been to repeat what existed formerly except where ... (incomplete record)

10 May 1947: In the following discussion by an OS officer it is obvious that "B.R. & F.P." were taken to be public. He mentions the Pack Riders Association and there is discussion in late 1940s re removing B.R.s now that packhorses were no longer in use. Inferring that the maps were useful to the packhorse trade, which used public highways.

B.R.s and F.P.s

You have unearthed a moderate scandal because this issue has never been squarely faced.

Former F.O.'s "revision" instructions (since destroyed by the enemy & never incorporated in the red book) are reported to have laid down that B.R. never disappeared from a plan at revision, except

- (iv) When by neglect & lack of use, it became impossible to trace on the ground or

²² Photo 214, 216, 217

(v) When it was a higher class road upon it

You will note that if some landowner erects what are obviously F.P. type barriers across it, it still remains B.R. to us.

The second interesting point is that F.P. on our plans is never promoted to B.R.; even if also the F.P. barriers are changed to B.R. type; but F.P. is altered to B.R. if a notice board, with a suitable authority quoted is erected and described it as such.

How the original judgement between F.P.'s and B.R.'s was made is shrouded in the mists of the past. The horse was then the country method of transport and the surveyor presumably had horses stumbling over his chain all the time he was on a B.R. and therefore was not in doubt.

On the new survey I propose to follow the former plans as closely as it is possible to do thus we shall be more likely to keep ahead of the question of "right of way for horses" which I imagine was bothering the pack riders who may have some bother with F.P.s and B.R.'s, which were diverted during the "dig for victory" campaign; and have not been diverted back again.

I think we must leave some latitude for the surveyor's judgement in these cases, rather as we have in the culvert-bridge-viaduct sequence.

November 1947: OS produced a Directive that there will no longer be any distinction between B.R. and F.P. which, as with several other references, strongly suggests that they no longer saw the point as horse transport was superseded, but without any consideration of their history of showing them as B.R. because of the public's rights on or leading a horse.

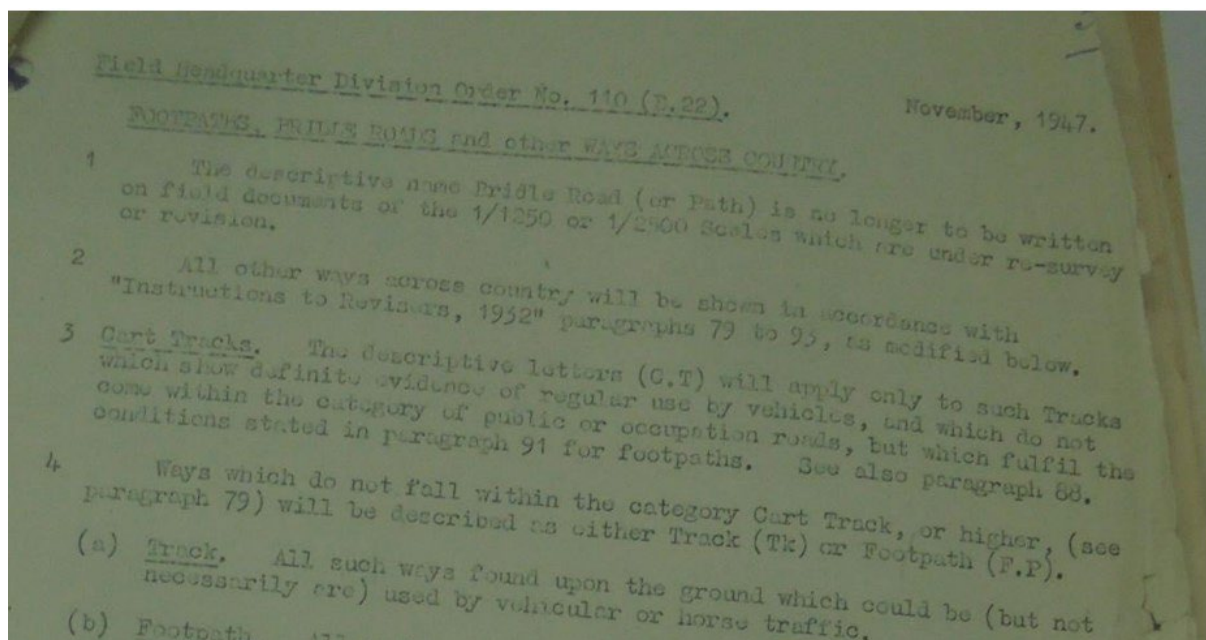


Figure 3 Field Headquarter Division Order

Field Headquarter Division Order No 110 (D22)

FOOTPATHS, BRIDLE ROADS and other WAYS ACROSS COUNTRY

The descriptive name Bridle Road (or path) is no longer to be written on field documents of the 1/1250 or 1/2500 scales which are under re-survey or revision.

These quotes demonstrate the historical truth as to how the Ordnance Survey officers considered depiction of bridleways and how maps were used.

Summary

The Disclaimer and “not concerned with rights of way”—legal rights can be contentious for which the Examiners were not qualified to decide, however, the disclaimer does not mean nothing shown was a public right, only that the Survey was protecting itself from liability. It was only used from 1889 (more than a century after O.S. being founded). It is feasible to surmise that an action was brought against the Ordnance Survey, which was settled without court, and to protect itself from future claims, the disclaimer was introduced.

Ordnance Survey aimed for public benefit as a commercial undertaking—Surveyors were instructed that a clearly marked track should only be shown *if in obvious use by the public*.

Ordnance Survey acknowledged use of its products by the public in the days of horse transport including by pack horse teams.

Use of B.R. by Field Surveyors indicated a public bridleway further to local information and “horses stumbling over their measuring chains”, such was the ubiquity of horse transport at that time.

Ordnance Survey maps were recommended to local volunteers surveying public paths under provisions of the Rights of Way Act 1932 and the National Parks and Access to the Countryside Act 1949, where paths and tracks were shown as F.P. or B.R. and applying the Thoroughfare Principle to assume public rights of way.

Conclusion

It is true that the Ordnance Survey did not concern itself directly with ‘rights of way’, whether public or private easement, but it is also true that the Survey only showed routes which were in obvious use by and of benefit to the public. The Field Examiners sought local opinion, including from Highway Surveyors, and acted on their own observations on site: where the public were passing with horses, B.R. was recorded for public bridle roads.

Authors: Catriona Cook, MBE and Geri Coop, with thanks to Sarah Bucks for the evidence in the Ordnance Survey file.
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